Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements	CC Docket Nos. 95-20, 98-10

REPLY COMMENTS OF AT&T

The comments filed in this proceeding reflect not just differences of opinion but different views of reality. On the one hand, commenters CenturyLink and Verizon Communications Inc. (Verizon) acknowledge the enormous changes that have taken place in the telecommunications and enhanced services marketplaces since the Commission crafted the present CEI and ONA rules made the subject of their comments. On the other, commenters Alarm Industry Communications Committee (AICC) and Full Service Network LP (FSN) seem to believe that these markets are still stuck in 1981. From our perspective, CenturyLink and Verizon have the better view and, therefore, AT&T concurs that there is "no longer any economic or other policy justification for imposing ongoing *Computer Inquiry* obligations uniquely upon just three providers of telecommunications networks."[1]

A. Discriminatory Access

Under the *Computer Inquiry* scheme, the Commission was addressing fears that common carriers—in particular the Bell operating companies (BOCs)—would use their *monopoly* position over networks to cross-subsidize their non-regulated enhanced service operations with revenues from their regulated businesses and to discriminatorily deny access to competing enhanced service providers. The question of cross-subsidization was put to rest with the introduction of

[1] Comments of CenturyLink at 2.

price-cap arrangements and other regulatory accounting measures.[2] The aim of the CEI and ONA scheme was to address fears concerning *discriminatory access*. The only question for the Commission to decide is, given the radical changes in the communications marketplace and in technology and the way consumers access and use information services, whether there is any rational basis to conclude that the provisions of the Communications Act, as amended, are insufficient to address any lingering concerns about discriminatory access.

In its comments, Verizon correctly points out that the assumptions underlying the present CEI and ONA service rules are no longer valid. For one, the ILEC wireline network platform is not "the only network platform available to enhanced service providers."[3] In this regard, consumers are by in large not using narrowband services to access information services. Indeed, they aren't even using ILEC wireline access. Today, both residential consumers and businesses use broadband access and have a "wide array of providers" from which to choose.[4] Consequently, it cannot seriously be maintained that the BOCs have a dominate market position that needs a unique set of rules applicable to them but not applicable to their competitors.[5] Both Verizon and CenturyLink do a good job of explaining the competitive landscape and the avenues available to consumers to access enhanced services.[6]

The *Interim Waiver Order*—the order providing the BOCs a limited waiver of the *Computer II* structural separation requirements—was adopted a year before the enactment of the Telecommunications Act of 1996, which revolutionized the telecommunications market in the United States.[7] The world in which that Order was promulgated resembles not at all the world of

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[2] *State of California v. FCC*, 39 F.3d 919, 926-27 (9th Cir. 1994).

[3] Verizon at 3.

[4] *Id.* at 4.

[5] CenturyLink at 9 ("It can no longer be seriously argued that ESPs [enhanced service providers] require a unique level of access to BOC networks as opposed to the networks of other traditional wireline telephone companies or wireless companies, cable companies and the like.")

[6] CenturyLink at 3-6; Verizon at 2-3.

[7] *Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1724 (Bur. 1995) ("To the extent that the California III decision might be regarded as returning regulation to the Computer II framework,

today.[8] Indeed, many feel that the Telecommunications Act of 1996 alone was sufficient reason to dismantle the entire *Computer Inquiry* structure, which is a relic of era of telephone company monopolies and a computer industry still in its infancy. Regardless, the foundation for the *Computer II* rules and regulations—*i.e.*, the fear that BOCs would discriminate against unaffiliated enhanced service providers (ESPs) and improperly support affiliated ESPs through cross-subsidization—arose at a time "when only a single platform capable of delivering [ESP] services was contemplated and only a single facilities-based provider of that platform was available to deliver them to any particular end user."[9] That time has long passed.

If this were not enough it is also true that, regardless of whatever pressures may have existed in the past for BOCs to discriminate against non-affiliated ESPs, those pressures do not exist today. In fact, the opposite it true. In a competitive market the pressure is to sell to ESPs and to keep as much traffic as possible on the BOC network thereby maximizing utilization of the network in order to achieve economies of scale and scope.[10] In this competitive environment, the protections of the Act, specifically Sections 201 and 202, are more than sufficient to address any concerns about discriminatory access.[11]

B. CEI Plans

Since 1999, the Commission has required that BOCs "post all their . . . CEI plans and plan amendments on their Internet websites and notify the Common Carrier Bureau [now the

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we grant the BOCs limited waivers of the Computer II structural separation requirements, pending conclusion of remand proceedings.").

[8] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; etc.*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14866 para. 21 (2005) (*Title I Order*) ("The Commission first examined the relationship between communications and computer processing in *Computer I*, a proceeding that began almost four decades ago in an era far different from today [i.e., 2005] in terms of the technological, marketplace, and regulatory environment for telecommunications carriers.")

[9] *Id.*, at 14879, para. 47.

[10] CenturyLink at 14 ("ONA services are, essentially, many of the core legacy network services that BOCs offer. They will continue to be important revenue sources for the BOCs and, thus, BOCs have every incentive to continue to offer them.").

[11] 47 U.S.C. §§ 201 & 202.

Wireline Competition Bureau] at the time of the posting."[12] The stated purpose for requiring this posting is allegedly that "the existence of CEI plans helps the Commission enforce compliance with BOC interconnection obligations."[13] In today's world, this is unnecessary. As the Commission itself noted "the movement toward local exchange and exchange access competition should, over time, decrease and eventually eliminate the need for regulation of the BOCs to ensure that they do not discriminate against competitive ISPs in providing access to their basic service offerings." AT&T submits that this time has come. Indeed, the time to eliminate this sort of regulation has long passed.

There is no evidence that CEI plans provide any useful information to anyone or that they are used in any manner. The information in CEI plans is not unique and is already publicly available. All of the telecommunications inputs used in conjunction with BOC-affiliated ESPs are either tariffed (at the state or federal level) or are they are sufficiently competitive to be de-regulated. What's more, the requirement to post CEI plans imposes unnecessary costs and gives competitors "an undue advantage" in a highly competitive marketplace.[14] Either way, the Commission's concerns in this area are pointless.

C. The 120-day Process

In its Further Notice, the Commission asks "whether there are continuing benefits associated with the obligations [to allow an ESP to request a new ONA basic service from the BOC and must receive a response from the BOC within 120 days (the 120-day Process)] that justify the costs."[15] In short, there are none. Since the introduction of this obligation there have

[12] *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review — Review of Computer III and ONA Safeguards and Requirements*, Order, 14 FCC Rcd 21628, 21630 para. 6 (1999).

[13] *Id.*

[14] CenturyLink at 11.

[15] *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations; etc.*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, FCC 13-69 (rel. May 17, 2013), para. 205 (Further Notice).

been few requests for new ONA basic services. Indeed, since 2005, AT&T hasn't received any. ESPs simply do not need new ONA services.

To this point, even AICC couldn't cite to even one request from its membership for a new ONA service.[16] Instead, it argues that, "due to the rapidly accelerating transition by the BOCs from circuit-switched networks to IP-based networks, . . . access to new ONA basic services is important as ESPs identify new alternatives."[17] Yet, this argument turns the whole *Computer Inquiry* model on its head and underscores how absurd it is to impose these requirements on one sector of a competitive telecommunications marketplace while leaving BOC competitors, many of whom rely on IP-based networks now, totally unburdened. In point of fact, the transition from TDM-based networks to IP-based networks is yet another reason that the Commission should eliminate these mid-20th Century regulations based on old fashioned concepts of computer processing and the provisioning of information services.

D. Conclusion

The CEI and ONA obligations made the subject of the Commission's Further Notice have long passed their "sell-by date." The serve no real purpose in the present highly competitive, multi-platform, Internet dominated world of telecommunications and information services. In the words of CenturyLink, these obligations have "lost their practical utility."[18] But more, they needlessly impose costs and discourage innovation on one sector of a diverse and competitive marketplace.[19]

We contend that the necessity of evaluating the worth of regulations is on-going. It does not stop the minute the regulations are adopted. When conditions change, regulators should reassess the continuing wisdom of their regulations—if for no other reason than to rebut the argument that regulators are incapable of self-regulation and that all regulation needs to be

[16] AICC at 5.

[17] *Id.*

[18] CenturyLink at 2.

[19] See Verizon at 7.

opposed because regulators will never reconsider them even in the face of compelling arguments that the basis for them no longer exists.

The conditions that gave birth to the *Computer Inquiry* regime have long since passed away. In technology, enhanced services have moved away from the narrowband, plain old telecommunications services and have turned instead to broadband services. In the marketplace, the local exchange market is wide open to competition, with most competitors not relying at all on the BOCs' networks. And in regulation, the thrust and focus is on the future of communications, which is found in IP-based networks. The Commission's focus should not be on preserving the past but on allowing the marketplace to function as it should and to permit all who choose to compete in that marketplace the opportunity to compete on a level playing field.

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